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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,679	01/29/2004	Krishna Kumar Subramanyan	J6835(C)	5575
201	7590	10/12/2005		
UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER COTTON, ABIGAIL MANDA	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,679

Applicant(s)

SUBRAMANYAN ET AL.

Examiner

Abigail M. Cotton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004 and 29 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/29/04, 7/29/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-5 are pending in the application.

Priority

Applicant's claim of priority to U.S. Provisional Application No. 60/455,320 filed March 17, 2003, is acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,641,495 to Jokura et al, issued June 24, 1997, in view of U.S. Patent No. 6,180,121 to Guenin et al, issued January 30, 2001.

Jokura et al. teaches a skin cosmetic causing little irritation and having an excellent moisturizing effect having (A) a ceramide or pseudoceramide, (B) a

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dicarboxylic acid, and (C) a salt of a dicarboxylic acid (see abstract, in particular.)

Jokura et al. teaches that the dicarboxylic acid and dicarboxylic acid can comprise malonic acid (see column 3, lines 30-50, in particular.) Jokura et al. also teaches that water, ethanol and/or water-soluble polyhydric alcohols can be employed as a base (cosmetically acceptable carrier), and can be provided in an amount of from about 0.1 to about 90% by weight of the composition (see column 4, lines 16-34, in particular), which meets the limitation of being from "about" 1 to "about 99% by weight as recited in claim 1.

Jokura et al. teaches that the dicarboxylic acid and dicarboxylic acid salt have a percent by weight in the composition of from 0.01 to 20% (see column 3, lines 53-56, in particular), and that the ratio of the carboxylic acid to the dicarboxylic acid salt in the composition can be from 1/9 to 9/1 (see column 3, lines 55-60, in particular.)

Accordingly, Jokura et al. meets the limitation of comprising a salt of malonic acid in from "about" 0.0001 to "about" 30% by weight of the composition, as recited in claim 1.

Furthermore, it is considered that one of ordinary skill in the art at the time the invention was made would have found it obvious to vary and/or optimize the percent content of the malonic acid salt in the composition, in accordance with the guidelines set forth by Jokura et al, to provide a skin composition having desired moisturizing effects and little skin irritation. It is noted that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955.)

Jokura et al. also teaches that the composition can further comprise other components that are commonly used in cosmetic, such as perfumes (see column 5, lines 20-34, in particular.)

Jokura et al. does not specifically teach the composition comprising the percent weight of fragrance having the percent weight of terpenoid as recited in claim 1.

Guenin et al. teaches fragrance enhancing compositions for cosmetic products (see abstract, in particular.) Guenin et al. teaches that fragrance composition can be combined into the composition in an amount of from 1.8 to 32.5% by weight, and teaches that the exemplary Deo-KeyTM fragrance compositions can combined in an amount of about 3% by weight (see column 8, line 63 through column 7, line 7, in particular), which meets the limitation of the fragrance percent content as recited in claim 1. Guenin et al. teaches that the fragrance composition can be made by combining at least three components from a group of listed fragrances that includes terpenoids such as d-limonene, citral and geraniol, and terpenoid containing fragrances such as Iso Methyl Cedryl Ketone A and Pelargonyl (see column 2, line 20 through column 3, line 35, in particular.) Guenin et al. furthermore exemplifies Deo-KeyTM fragrance compositions comprising a terpenoid in the recited percent by weight of the fragrance composition, such as for example Orange Oil Morroco (limonene) in a percent

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by weight of 2.00-8.00, which meets the percent weight limitation recited in claim 1 (see column 7, line 10 through column 8, lines 36, in particular.)

Accordingly, Guenin et al. teaches a fragrance composition having components that can be selected to provide the recited terpenoid weight percent, and that can be combined into cosmetic compositions to provide a fragrance and reduce odor.

Furthermore, it is considered that one of ordinary skill in the art at the time the invention was made would have found it obvious to vary and/or optimize the percent content of the fragrance in a cosmetic composition, and/or the percent content of terpenoid in the fragrance composition, in accordance with the guidance provided by Guenin et al, to provide a composition having a desired fragrance type and level. It is noted that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955.)

Accordingly, one of ordinary skill in the art at the time the invention was made would have found it obvious to combine the fragrance composition of Guenin et al. into the skin care composition of Jokura et al. to devise the personal care composition of claim 1, because Jokura et al. teaches that the skin care composition comprising the dicarboxylic acid salt such as a salt of malonic acid can comprise conventional cosmetic additives such as a perfume, and Guenin et al. teaches a fragrance composition (perfume) that can be combined into cosmetic compositions comprising a terpenoid as

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claimed. Thus, one of ordinary skill in the art would have been motivated to provide the terpenoid-containing fragrance composition of Guenin et al. into the skin care composition of Jokura et al. with the expectation of providing a skin care composition capable of moisturizing skin and having a desirable fragrance. Therefore, the composition of claim 1 is obvious over the teachings of Jokura et al. and Guenin et al.

Regarding claims 2-3, Jokura et al. teaches that the salt of the dicarboxylic acid can be formed by the addition of an alkali to for the aimed salt via neutralization in the system (see column 3, lines 45-50, in particular), which would form a mixture of half-neutralized and fully neutralized acid according to the amount of alkali added. Jokura et al. furthermore exemplifies compositions formed by addition of the acid and the fully neutralized salt (see table 2, in particular), which in solution would form an equilibrium amount of half neutralized and fully neutralized salt. Accordingly, it is considered that one of ordinary skill in the art at the time the invention was made would find it obvious to vary and/or optimize the amount of base/salt provided to achieve the ratios of half neutralized to fully neutralized dicarboxylic acid that provide optimum skin moisturizing effects without irritating skin, as taught by Jokura et al. It is noted that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955.)

Regarding claims 4-5, Jokura et al. teaches that salts of the dicarboxylic acid can include alkali and alkali earth metals, such as sodium potassium calcium and magnesium, as in claim 4, and can also comprise alkanolamine salts such as triethanolamine, as in claim 5.

Accordingly, claims 1-5 are unpatentable over the teachings of Jokura et al. and Guenin et al.

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0224023 to Faryniarz et al (hereinafter Faryniarz '023), published December 4, 2003, in view of U.S. Patent No. 6,180,121 to Guenin et al, issued January 30, 2001.

Faryniarz '023 teaches a cosmetic composition having monohydroxy-substituted amine salts of malonic acid (see abstract, in particular.) Faryniarz '023 teaches that the malonate salt can comprise from 1 to 8% by weight of the composition (see paragraph 0021, in particular), which meets the limitation recited in claim 1. Faryniarz '023 furthermore teaches that the carrier can comprise from 70 to 95% of the composition (see paragraph 0024, in particular), which meets the limitation recited in claim 1.

Regarding claims 2-3, Faryniarz '023 teaches the mono and di-salt can be present in a ratio of 100:1 to 1:100, which meets the limitation of claim 2, or 2:1 to

1:200, which meets the limitation of claim 3 (see paragraph 0022, in particular.)

Regarding claim 5, Faryniarz '023 teaches that the salt can include mono-hydroxy amines such as those recited in the claim (see paragraph 0020, in particular.)

Faryniarz '023 furthermore teaches that fragrances can be included in an amount of from about 0.05 to 5% by weight (see paragraph 0054, in particular), which meets the limitation of the fragrance weight percentage recited in claim 1.

Faryniarz '023 does not specifically teach providing the fragrance composition comprising a terpenoid as recited in claim 1.

Guenin et al. teaches fragrance enhancing compositions for cosmetic products (see abstract, in particular.) Guenin et al. teaches that fragrance composition can be combined into the composition in an amount of from 1.8 to 32.5% by weight, and teaches that the exemplary Deo-Key™ fragrance compositions can combined in an amount of about 3% by weight (see column 8, line 63 through column 7, line 7, in particular), which meets the limitation of the fragrance percent content as recited in claim 1. Guenin et al. teaches that the fragrance composition can be made by combining at least three components from a group of listed fragrances that includes terpenoids such as d-limonene, citral and geraniol, and terpenoid containing fragrances such as Iso Methyl Cedryl Ketone A and Pelargonyl (see column 2, line 20 through column 3, line 35, in particular.) Guenin et al. furthermore exemplifies Deo-Key™

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fragrance compositions comprising a terpenoid in the recited percent by weight of the fragrance composition, such as for example Orange Oil Morocco (limonene) in a percent by weight of 2.00-8.00, which meets the percent weight limitation recited in claim 1 (see column 7, line 10 through column 8, lines 36, in particular.)

Accordingly, Guenin et al. teaches a fragrance composition having components that can be selected to provide the recited terpenoid weight percent, and that can be combined into cosmetic compositions to provide a fragrance and reduce odor. Furthermore, it is considered that one of ordinary skill in the art at the time the invention was made would have found it obvious to vary and/or optimize the percent content of the fragrance in a cosmetic composition, and/or the percent content of terpenoid in the fragrance composition, in accordance with the guidance provided by Guenin et al, to provide a composition having a desired fragrance type and level. It is noted that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955.)

Accordingly, one of ordinary skill in the art at the time the invention was made would have found it obvious to combine the fragrance composition of Guenin et al. into the cosmetic composition of Faryniarz '023 to devise the personal care composition of claim 1, because Faryniarz '023 teaches that the cosmetic composition comprising the salt of malonic acid can comprise fragrances, and Guenin et al. teaches a fragrance

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composition that can be combined into cosmetic compositions comprising a terpenoid as claimed. Thus, one of ordinary skill in the art would have been motivated to provide the terpenoid-containing fragrance composition of Guenin et al. into the cosmetic composition of Faryniarz '023. with the expectation of providing a cosmetic composition capable of providing skin benefits and having a desirable fragrance. Therefore, the compositions of claims 1-3 and 5 are obvious over the teachings of Faryniarz '023 and Guenin et al.

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent Application Publication No. 2003/0224027 to Faryniarz et al. (herein after Faryniarz '027), published December 4, 2003, in view of in view of U.S. Patent No. 6,180,121 to Guenin et al, issued January 30, 2001.

Faryniarz '027 teaches a cosmetic composition having a salt of malonic acid such as ammonium malonate (see abstract, in particular.) Faryniarz '027 teaches that the malonate salt can comprise from 1 to 8% by weight of the composition (see paragraph 0018, in particular), which meets the limitation recited in claim 1. Faryniarz '027 furthermore teaches that the carrier can comprise from 70 to 95% of the composition (see paragraph 0021, in particular), which meets the limitation recited in claim 1.

Regarding claims 2-3, Faryniarz '027 teaches the mono and di-salt can be present in a ratio of 100:1 to 1:100, which meets the limitation of claim 2, or 2:1 to 1:200, which meets the limitation of claim 3 (see paragraph 0019, in particular.)

Regarding claim 5, Faryniarz '027 teaches that the salt can include mono-hydroxy amines such as those recited in the claim (see paragraph 0017, in particular.)

Faryniarz '027 furthermore teaches that fragrances can be included in an amount of from about 0.05 to 5% by weight (see paragraph 0049, in particular), which meets the limitation of the fragrance weight percentage recited in claim 1.

Faryniarz '027 does not specifically teach providing the fragrance composition comprising a terpenoid as recited in claim 1.

Guenin et al. teaches fragrance enhancing compositions for cosmetic products (see abstract, in particular.) Guenin et al. teaches that fragrance composition can be combined into the composition in an amount of from 1.8 to 32.5% by weight, and teaches that the exemplary Deo-KeyTM fragrance compositions can combined in an amount of about 3% by weight (see column 8, line 63 through column 7, line 7, in particular), which meets the limitation of the fragrance percent content as recited in claim 1. Guenin et al. teaches that the fragrance composition can be made by combining at least three components from a group of listed fragrances that includes terpenoids such as d-limonene, citral and geraniol, and terpenoid containing fragrances

such as Iso Methyl Cedryl Ketone A and Pelargonyl (see column 2, line 20 through column 3, line 35, in particular.) Guenin et al. furthermore exemplifies Deo-Key™ fragrance compositions comprising a terpenoid in the recited percent by weight of the fragrance composition, such as for example Orange Oil Morroco (limonene) in a percent by weight of 2.00-8.00, which meets the percent weight limitation recited in claim 1 (see column 7, line 10 through column 8, lines 36, in particular.)

Accordingly, Guenin et al. teaches a fragrance composition having components that can be selected to provide the recited terpenoid weight percent, and that can be combined into cosmetic compositions to provide a fragrance and reduce odor. Furthermore, it is considered that one of ordinary skill in the art at the time the invention was made would have found it obvious to vary and/or optimize the percent content of the fragrance in a cosmetic composition, and/or the percent content of terpenoid in the fragrance composition, in accordance with the guidance provided by Guenin et al, to provide a composition having a desired fragrance type and level. It is noted that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955.)

Accordingly, one of ordinary skill in the art at the time the invention was made would have found it obvious to combine the fragrance composition of Guenin et al. into the cosmetic composition of Faryniarz '027 to devise the personal care composition of

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claim 1, because Faryniarz '027 et al. teaches that the cosmetic composition comprising the salt of malonic acid can comprise fragrances, and Guenin et al. teaches a fragrance composition that can be combined into cosmetic compositions comprising a terpenoid as claimed. Thus, one of ordinary skill in the art would have been motivated to provide the terpenoid-containing fragrance composition of Guenin et al. into the cosmetic composition of Faryniarz '027 with the expectation of providing a cosmetic composition capable of providing skin benefits and having a desirable fragrance. Therefore, the compositions of claims 1-3 and 5 are obvious over the teachings of Faryniarz '027 and Guenin et al.

Conclusion

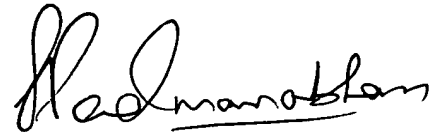
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abigail M. Cotton whose telephone number is (571) 272-8779. The examiner can normally be reached on 8:30-5:00, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMC



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SUPERVISORY PATENT EXAMINER